

**UNITED STATES DISTRICT COURT
for the
SOUTHERN DISTRICT OF NEW YORK**

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MAGOLA CACERES,)	
)	
Plaintiff)	
)	Case No. 1:11-cv-06095-PAC
v.)	ECF Case
)	
NCO PORTFOLIO MANAGEMENT, Inc. &)	
NCO FINANCIAL SYSTEMS, Inc. ,)	JURY TRIAL DEMANDED
Defendants)	
-----)	

COMPLAINT

Preliminary Statement

1. Plaintiff brings this action for redress of defendants violations of the Fair Debt Collection Practices Act, 15 U.S.C.A. §§ 1692 et seq. ("FDCPA").

2. The FDCPA prohibits debt collectors from engaging in abusive deceptive and unfair debt collection practices and was passed in response to Congressional findings of an abundant use of unfair and abusive debt collection practices leading to personal bankruptcy, increased unemployment and invasions of privacy.

3. The FDCPA prohibits abusive tactics such as making false representations about the legal status of the debt and the amount owed. It prohibits the collection of unverified debts and protects consumers from harassing communications.

Jurisdiction

4. The jurisdiction of the United States District Court is based on 28 U.S.C.A. § 1331.

Parties and Venue

5. The Southern District of New York is a proper venue for this action pursuant to 28 U.S.C.A. § 1391(b) as a substantial part of the events or omissions giving rise to the claim occurred therein.

6. Plaintiff, Magola Caceres, is a natural person residing in New York, NY.

7. Upon information and belief, Defendant NCO Portfolio Management, Inc. (NCO PM) is a Delaware corporation with a principal place of business located at 507 Prudential Road, Horsham, PA. NCO PM is a debt collection agency licensed by the New York City Department of Consumer Affairs, License #1325407, and a “debt collector” as defined under the FDCPA at 15 U.S.C.A. § 1692(a)(6). NCO PM regularly conducts business in New York State.

8. Upon information and belief, Defendant NCO Financial Systems, Inc. (NCO FS) is a Pennsylvania corporation with a principal place of business located at 507 Prudential Road, Horsham, PA. NCO FS is a debt collection agency licensed by the Department of Consumer Affairs of the City of New York, License #0907469, and a “debt collector” as defined under the FDCPA at 15 U.S.C.A. § 1692(a)(6). NCO FS regularly conducts business in New York State.

9. Upon information and belief, NCO PM and NCO FS are subsidiaries of NCO Group, Inc., a Delaware company with principal executive offices located at 507 Prudential Road, Horsham, PA.

Facts

10. On or about November 25, 2008, NCO PM commenced *NCO Portfolio Management, Inc. v. Magola Caceres*, Index number CV-071628-08, in the Civil Court of the City of New York, New York County. In its Civil Court Complaint, NCO PM, as purported assignee, alleged that Ms. Caceres defaulted on an MBNA account #4800121999189051 and owed \$6,070.04, accrued interest from May 12, 2003, and costs.

11. On or about May 28, 2009, Ms. Caceres served her Answer asserting defenses including that she was the victim of mistaken identity or identity theft, did not owe the alleged debt and that the statute of limitations to collect the alleged debt had expired.

12. On or about May 28, 2009, Ms. Caceres served a Demand for Documents and Information upon NCO PM requesting the credit application, credit card statements, payments history and proof of a valid assignment.

13. NCO PM produced no documents and violated the Civil Court's Order that it do so.

14. By Decision and Order dated November 5, 2009, the Civil Court marked the case as final for trial on March 10, 2010.

15. NCO PM never produced the documentation regarding the alleged debt.

16. By Decision and Order dated March 10, 2010, the Civil Court dismissed, with prejudice, NCO PM's case against Ms. Caceres, citing Plaintiff's failure to produce evidence of its prima facie case.

17. On or about October 21, 2010, NCO FS as servicer of NCO PM sent a letter to Ms. Caceres demanding payment of \$20,104.67 in satisfaction of the same account that was the subject of the Civil Court action. Exhibit A.

18. On or about December 15, 2010, Ms. Caceres sent a letter via Certified Mail to NCO FS which stated that the Civil Court had dismissed the case against her, about the same account, and included a copy of the Decision and Order of dismissal.

19. On or about January 9, 2011, NCO FS as servicer of NCO PM sent another letter to Ms. Caceres offering to settle the account which was allegedly due \$20,370.48. Exhibit B.

20. Upon information and belief, NCO FS and NCO PM do not maintain systems, or have procedures in place, designed to avoid the errors alleged herein.

Trial by Jury

21. Please take notice that Plaintiff demands trial by jury in this action.

Causes of Action

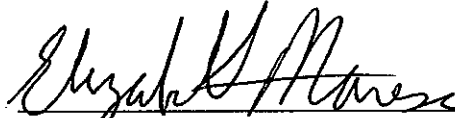
22. Plaintiff realleges and incorporates all proceeding paragraphs.
23. Plaintiff's cause of action arises under the FDCPA.
24. By its October 2010 letter, Defendants violated:
 - a. 15 U.S.C. § 1692g(b) as they attempted to collect an unverified debt;
 - b. 15 U.S.C. § 1692e(2)(A) as they dunned the wrong individual due to their failure to exercise reasonable care in ascertaining the facts;
 - c. 15 U.S.C. § 1692e(2)(A) as defendants' proffered that NCO PM had purchased the alleged debt from MBNA although defendants' have no valid legal assignation of the alleged debt; and
 - d. 15 U.S.C. § 1692e(2)(A) by misrepresenting the amount allegedly owed.
21. By its January 2011 letter, Defendants violated:
 - a. 15 U.S.C. § 1692e(2)(A) as they dunned the wrong individual due to their failure to exercise reasonable care in ascertaining the facts;
 - b. 15 U.S.C. § 1692e(2)(A) by misrepresenting the amount owed; and
 - c. 15 USC § 1692g(b) as defendants' offer to "settle" and thus collect an unverified debt.
22. Defendants' repeated violations of the FDCPA entitled the Plaintiff to statutory damages in the amount of \$1,000 per violation.

WHEREFORE, Plaintiff respectfully prays that this Court:

- (a) enter judgment against defendants for damages pursuant to 15 U.S.C.A. §§ 1692 et seq. in the amount of \$7,000;
- (b) award Plaintiff her costs and reasonable attorney's fees pursuant to 15 U.S.C.A. §§ 1692 et seq.; and
- (c) grant such other and further relief as it deems just and proper.

Dated: *August 22, 2011*
New York, NY

Lincoln Square Legal Services, Inc.



ELIZABETH MARESCA

Bar # EM4479

Supervising Attorney

Fordham Law School

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New York, NY 10023

(212) 636-7353

Marcella Silverman

Supervising Attorney

Jonathan Schwartz

Legal Intern

Exhibit A

PO Box 4909
Dept 22
Trenton, NJ 08650-4909

NCO FINANCIAL SYSTEMS INC

507 Prudential Road, Horsham, PA 19044

1-866-576-1447

OFFICE HOURS:

8AM-9PM MON THRU THURSDAY

8AM-5PM FRIDAY

8AM-12PM SATURDAY

Oct 21, 2010

Calls to or from this company may be monitored
or recorded for quality assurance.

0464-7626

FW1396
MAGOLA CACERES
655 E 14TH ST
NEW YORK NY 10009-3102

NCO PORTFOLIO MANAGEMENT
FORMER CREDITOR:

MBNA

CREDITOR'S ACCOUNT #: 4800121999189051

CURRENT BALANCE DUE: \$ 20104.67

Your account has been purchased by NCO PORTFOLIO MANAGEMENT. NCO Financial Systems, Inc. is the servicer of the account.

The creditor has agreed to accept 60 percent of the balance listed above or \$12062.80 as a lump sum settlement of the account. This offer will remain valid for a minimum of 45 days from the date of this letter and may be extended for an additional period. Before making a settlement payment after 45 days from the date of this letter, please confirm with one of our representatives that this offer is still valid.

Should you choose to accept this offer, please enclose the bottom portion of this letter, or a copy thereof, with your settlement payment and mark your check or money order with the account number and that this is a settlement. Returned checks may be subject to the maximum fees allowed by your state.

You may also make payment by visiting us online at www.ncofinancial.com. Your unique registration code is CFW13962-2WLX0. To receive future notices for the account(s) by e-mail, visit www.ncofinancial.com for details.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

Should you choose not to accept this offer, your account balance may be periodically increased due to the addition of accrued interest or other charges as provided in your agreement with the original creditor or as otherwise provided by state law.

This is an attempt to collect a debt. Any information obtained will be used for that purpose. This is a communication from a debt collector.

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT (MAKE SURE ADDRESS SHOWS THROUGH WINDOW)

THIS COLLECTION AGENCY IS LICENSED BY THE
DEPARTMENT OF CONSUMER AFFAIRS OF THE CITY OF NEW
YORK; LICENSE#0907469
CONTACT ALEX DREW AT NCO FINANCIAL SYSTEMS, INC.

Our Account #	Current Balance Due
FW1396	\$ 20104.67

MAGOLA CACERES

Payment Amount

\$

Make Payment To:

|||||

NCO FINANCIAL SYSTEMS

PO BOX 4907

TRENTON NJ 08650-4907

NCOP E5
7626

Check here if your address or phone number has
changed and provide the new information below.

Exhibit B

NCOP 18
9

Creditor
NCO PORTFOLIO MANAGEMENT

Former Creditor
MBNA

Creditor's Account # CusBalDue
4800121999189051 20370.48